for plaintiff of $2000, (2) appeal to circuit court, (3) appeal to supreme court, reversed and remanded, (4) new trial in circuit court, judgment for $6500, set aside and new trial ordered, (5) second *new* trial in circuit court, judgment for $6000, (6) appeal to supreme court, reversed and remanded. It may be assumed that if plaintiff is not worn out there will be at least (7) third *new* trial in circuit court, and (8) third appeal to supreme court. And all for what reason? As to the present reversal, because, although the jury had answered "no" to the question, "Did the plaintiff at said time fail to use ordinary care for his own safety and thereby proximately contribute to produce his injury?" the judge in defining proximate cause included the phrase, "It likewise must have been the cause of the result without any other outside cause coming in to interfere and produce the result." This would shut out concurrent causes, which could do defendant no harm in this case, and also contributory acts of plaintiff. As the jury had already found defendant negligent, it would preclude also finding plaintiff negligent. At this day, after the thousands of cases involving and defining proximate cause, it is certainly a serious reflection on the administration of justice that a suitor on his sixth appearance in court should find that his action must start all over for error in definition of the most familiar terms in damages, the more so since in this case the judge had elsewhere correctly defined proximate cause, and the facts are so very simple, were so many times passed upon by juries, and always with the same result. On all the circumstances of this case, could the court find any probability that a different verdict would have been found if the correct definition of proximate cause which was already before the jury had been repeated here? If not, then this slight change should not have been held reversible error. Legal definition has sometimes been carried to such a complicated nicety as to conceal rather than reveal meaning, and to become a mere pitfall for the suitor in quest of justice rather than a light leading to the goal of legal procedure, justice.

APPEAL AND ERROR—GENERAL FINDING OF COURT WITHOUT JURY NOT REVIEWABLE.—In an action to recover penalties for the violation of a certain federal statute the trial court found as a fact that the defendant company was not engaged in interstate commerce and therefore not subject to the act upon which the complaint was based. A statute provided that findings of the court upon the facts should have the same effect as the verdict of a jury. The question was whether or not this finding of the court could be reviewed on appeal. *Held,* the finding of the trial court was conclusive and there was nothing to review. *United States* v. *Columbia & N. R. Co.,* 274 Fed. 625.

On appeal in equity, findings of fact made by the court below are entitled to some weight, but are not binding upon the appellate court. The whole case is before the latter court, and it must decide the same on its merits. *Quigley* v. *Beam,* 137 Ky. 325. In an action at law, findings of the trial court are placed on the same footing as the verdict of a jury, even in the

absence of a statute to that effect, and are considered conclusive on appeal. 4 CORPUS JURIS, 876, and cases there cited. Where, however, there is no evidence in support of a finding the appellate court may set it aside. *Hartford* v. *Poindexter,* 84 Conn. 121; *Hedge* v. *Williams,* 131 Cal. 455. The converse of this proposition is that where there is conflicting evidence the findings of the trial court will not be disturbed. *Baxter* v. *New York, etc., Ry. Co.,* 214 Mass. 323. An Ontario court denies that the findings of fact made by the trial court stand upon the same footing as the verdict of a jury, and holds that the appellate court may come to a different conclusion and act upon it. *Bateman* v. *County of Middlesex,* 6 D. L. R. 533. Several American states have by statute provided that in actions at law the findings of fact made by the trial court may be reviewed. North and South Dakota have such statutes. 3 ANN. CASES, 686. The South Dakota court in construing the statute has held that in reviewing the evidence the appellate court will not pass upon the weight of the evidence, as a trial court may do, but will only reverse the finding where it is contrary to a clear preponderance of the evidence. *Randall* v. *Burk Township,* 4 S. Dak. 337. By the statute in Washington the appellate court must examine *de novo* the evidence upon which the finding is based. *Allen* v. *Swerdfiger,* 14 Wash. 461. In Wisconsin it was formerly provided by statute that upon appeal in a case tried by a court without a jury the appellate court should review questions of fact as well as of law, and it was held to be the duty of the court to examine and weigh the evidence and to reverse the judgment if it was found there was a preponderance of evidence in favor of the appellant. *Snyder* v. *Wright,* 13 Wis. 689. A subsequent statute provided that the appellate court should give judgment according to the right of the cause, regardless of the decision below, and the statute was held invalid in so far as it made it the duty of the supreme court to decide questions as a court of original jurisdiction. *Klein* v. *Valerius,* 87 Wis. 54.

BROKERS—COMPENSATION—REFUSAL OF PURCHASER TO PERFORM.—P employed D, a real estate broker, "to find a purchaser" for his property. D found a purchaser who was accepted by P, an oral agreement was made, and the purchaser made a small payment. A week later the buyer changed his mind and refused to purchase the property. D refused to turn over to P the payment which had been made, claiming it as his commission. On suit by P, it was *held* that D had found a purchaser within the meaning of the contract and was entitled to the payment as his commission. *Jutras* v. *Boisvert* (Me., 1921), 115 Atl. 517.

The duty of a broker employed to find a purchaser is performed when he has found one who is ready, willing and able to purchase upon the terms specified. 2 MECHEM, AGENCY, § 2430, and cases there cited. The principal case raises the question of when one is "found" within the meaning of this rule. It is generally held that there need be no binding contract between the vendor and the purchaser if the latter is ready to perform. *Allgood* v. *Fahrney,* 164 Ia. 540; *McDonald* v. *Smith,* 99 Minn. 42. And if, under these